



Questions & Answers

Water Right Claims

History of Washington Water Law

In our early history, Washington settlers obtained water rights under two doctrines: the Riparian Doctrine and the Prior Appropriation Doctrine. The Riparian Doctrine allowed a person with property next to a surface water body to draw water from that source. The Prior Appropriation Doctrine allowed water to be used on land which was not directly adjacent to the water source.

In 1917, the Washington State Legislature enacted the Water Code. The Legislature said “all waters within the state belong to the public, subject to existing rights.” Subsequently, water law was based on the Prior Appropriation Doctrine: “first in time, first in right.” This Water Code established a permitting process to obtain surface water rights. However, this code did not address water rights established before 1917.

By 1945, many people were using wells. The Legislature then enacted the Ground Water Code which did not address ground water rights established before 1945. The same permitting process used for surface water was now extended to ground water. However, the Ground Water Code did allow an exemption to the permit requirement if you use a total of 5,000 gallons or less of ground water from a well each day for any of the following combinations:

- ✂ Stockwatering purposes,
- ✂ Singles or group domestic purposes,
- ✂ Industrial purposes, **or**
- ✂ Watering a lawn or noncommercial garden that is a half acre or less in size.

Today, the Department of Ecology manages the permitting process for surface and ground waters.

By the 1960's, the Legislature realized that water rights established prior to 1917 for surface water and 1945 for ground water should be recorded. These water rights are vested rights. A vested right is a water right established by the beneficial use of water. Beneficial use is the reasonable quantity of water that has been applied to a specific type of use; i.e. domestic, irrigation, etc. A water right claim is a statement of the beneficial use of water that occurred either prior to the adoption of the water codes or from exempt ground water uses and are not authorized by a state-issued permit or certificate.

Records for vested rights and exempt ground water uses were incomplete and scattered. As a result, the state had no record of the amount of water being used. The Claims Registration Act was passed to record the amount and location of these vested and exempt water rights.

Claims Registration

The Claims Registration Act was passed to appraise the water being used and determine our needs for the future. It was intended to capture two types of water use: vested rights and ground water uses exempt from the permitting process.

The Claims Registration Act set up periods of time for water users to file their water right claim with the state. Some users were not required to file a claim, including:

- ✂ Individuals who were served water through a company, district, public or municipal corporation (the water supplier should have filed claims for its users);
- ✂ Persons with a valid Water Right Permit or recorded Certificate;
- ✂ Individuals with a water right determined by Court Decree and recorded through issuance of a Certificate of Water Right by the department or one of its predecessor agencies;
- ✂ Nonconsumptive water uses, like boating, swimming, or other recreational and aesthetic uses, with no physical diversion or artificial impoundment of water; or
- ✂ Owners of livestock that drank directly from a surface water source.

All other water users were advised to register a claim to a water right. About 165,000 claims were filed on the Claims Registry. Unauthorized water users were advised by Ecology to file a water right application. Ecology was required to set up the registry and keep these claims on file. Ecology acknowledged receipt of claims, but did not determine the validity of the information at the time.

Here are answers to the most commonly asked questions about water right claims.

Q. *“What if I (or the previous property owner) established a vested right, but failed to file a claim?”*

A. If you (or your predecessor) did not file a claim for a vested right, that right was relinquished. In other words, if you had a vested right, and did not file a claim, you lost that right and are no longer authorized to divert or withdraw that water. The Claims Registry is closed and Ecology cannot accept newly filed claims.

Q. *“How do I know if a water right claim was filed for my property?”*

A. You may write and request a record search of Ecology's claims registry. Please write the regional office nearest you. (See page four.) Note: be sure to include a copy of your legal property description with any letter of inquiry.

Q. *“If I filed a claim, do I have a water right?”*

A. No. A claim filed under the Claims Registration Act did not give you a right to use the water. It was necessary to file a claim to protect a vested water right which was established prior to 1917 for surface water and 1945 for ground water. A water right is authorization to use water. A water right claim is only a statement that you claim to have a vested right -- or an exempt ground water use.

Q. “*Will my claim to a vested right ever be confirmed by the state?*”

A. A small portion of Washington's vested rights have already been confirmed through a process known as a general water right adjudication. An adjudication is a legal process, conducted through the Superior Court, to determine the validity and extent of existing water rights in a given area. An adjudication does not create new rights, it only confirms existing rights. If your right is confirmed, you will receive a certificate issued by the state. Each confirmed right includes a priority date, quantity, point of diversion, and place of use. Ecology will protect and enforce the elements of your right as stated on the certificate once a vested right is confirmed and a certificate is issued.

Q. “*How can I protect my claimed right?*”

A. First determine that the vested water right was perfected, and was not relinquished for failure to file a claim. If a claim was filed, verify the elements of your registered claim. A claim protects a vested water right if you:

- ✂ Used surface water before 1917, or ground water before 1945;
- ✂ Filed a water right claim with the state; and
- ✂ Have continuously used the same amount of water.

This can be shown through items like photographs or maps depicting the water system, historical documents or old letters that describe the system, tax documents, or “old timer” testimony that the system existed, and has continuously existed up to the present date. If you have a registered claim, it is extremely important that you maintain documents that support your claim. If you have not already done so, please collect and maintain historical records of your water use.

Q. “*What if Ecology advises me that my water use is not protected by a claim?*”

A. You should not continue to use water if it appears that you do not have a vested water right. Ecology will work with you to try and find alternate ways for you to use water legally. Unauthorized use of water is illegal and detrimental to your neighbors, as well as our state's waters.

Q. “*How will I know if an adjudication will occur in my area?*”

A. When an area is scheduled for an adjudication, all affected water users within the area are notified by summons issued from the Superior Court. It is important, however, that you not wait until that time to collect information you need to support your claim.

Q. “*Does my claim limit my water usage in any way?*”

A. Yes. Your claim protects your water right only for the quantity, purpose, and place of use established prior to the surface and ground water codes. Your current water use should be consistent with this information. You may request to change the purpose and place of use of your water right, but increasing the quantity of water

historically used is not allowed. If you contemplate expansion of your water use, you must obtain prior authorization in the form of a new state-issued water right. If you expand your water use without first obtaining a state-issued permit, you are subject to enforcement.

For More Information

Q. *“How can I find out more about my claim?”*

A. First you should research and document your historical water use. This will prepare you to answer our questions and speed up the Ecology review. Then if you need more information about your claim and available alternatives, you can write or call the Shorelands and Water Resources Program at the Department of Ecology regional office nearest you.

Northwest Regional Office	3190 - 160th Avenue SE Bellevue, WA 98008-5452	(206) 649-7000 TDD (206) 649-4259
Southwest Regional Office	P.O. Box 47775 Olympia, WA 98504-7775	(360) 407-6300 TDD (360) 407-6306
Eastern Regional Office	N. 4601 Monroe, Suite 100 Spokane, WA 99205-1295	(509) 456-2926 TDD (509) 458-2055
Central Regional Office	15 W. Yakima Ave., Suite 200 Yakima, WA 98902-3401	(509) 575-2597 TDD (509) 454-7673